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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/395,455	09/14/1999	ANDREW SARKISIAN	199-1135	6058

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EXAMINER

COLON, CATHERINE M

ART UNIT	PAPER NUMBER
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3623

DATE MAILED: 03/31/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n N .

09/395,455

Applicant(s)

SARKISIAN ET AL.

Examin r

C. Michelle Colon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8,10,13-15,17-21,23,26-31 and 33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8,13-15,17-21,26-31 and 33 is/are rejected.
- 7) ☐ Claim(s) 10 and 23 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. Prosecution has been re-opened in response to the Appeal Brief filed on December 29, 2003. Accordingly, the following is a Non-Final Office Action. Claims 1-8, 10, 13-15, 17-21, 23, 26-31 and 33 are now pending in this application.

Claim Objections

2. Claims 4 and 5 objected to because of the following informalities: They contain the same limitations. Appropriate correction is required.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 1-8, 10, 13-15, 17-21, 23, 26-31 and 33 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

As per the first prong of the test, for a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences) and therefore are found

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to be non-statutory subject matter. For a process claim to be satisfactory, the recited process must somehow apply, involve, use, or advance the technological arts.

In the present case, claims 1-8, 10, 13-15, 17-21, 23, 26-31 and 33 only recite the steps to a method for developing a brand profile for a new product; however, the recited steps do not apply, involve, use, or advance the technological arts since all of the recited steps can be performed in person or by use of a pencil and paper and without the need of a computer or other technology.

As per the second prong of the test, for a claimed invention to be statutory, the claimed invention must produce a useful, concrete, and tangible result. In the present case, the claimed invention produces a brand profile (i.e., concrete) for the development of a new product (i.e., useful and tangible).

Although the recited process produces a useful, concrete, and tangible result, since the claimed invention, as a whole, is not within the technological arts as explained above, claims 1-8, 10, 13-15, 17-21, 23, 26-31 and 33 are directed to non-statutory subject matter.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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6. Claims 1-8, 13-15, 17-21, 26 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Cooper et al., "Building market structures from consumer preferences".

As per claims 1 and 13, Cooper et al. discloses a method of developing a brand profile for a new product comprising the steps of:

providing a predetermined plurality of product attributes each representing an identifiable feature of a generic product under consideration (page 3, paragraphs 2-5; Table 2; The article discloses that consumers evaluate brands based on their underlying attribute values.);

grouping said product attributes in response to customer-oriented market research (page 3, paragraphs 2-5; page 7, paragraph 3; Table 2; The article discloses that consumers evaluate brands based on their underlying attribute values. Table 2 represents a category-attribute matrix.);

placing each of said attributes in an attribute class corresponding to brand personality importance (abstract; page 7, paragraphs 3 and 4; Table 2; Attributes are placed in attribute classes corresponding to brand personality.);

thereafter, generating a preferred product brand position as a function of said product attributes, including identifying a competitive set of products, and associating each of said product attributes with a preferred competitive level with respect to said competitive set (page 1, paragraphs 2-3; page 2, paragraphs 1 and 4; page 10, paragraph 1; Figure 2; The article discloses identifying competitive groups and how products' attributes influence their competitive levels.); and

generating target product characteristics as a function of said classified product attributes and said preferred product brand position, said target product characteristics representing customer-driven objectives for each of said plurality of product attributes to be incorporated into said new product (page 9, paragraphs 1 and 2; page 10, paragraphs 1 and 2; Table 5; Figures 2 and 3; The article discloses generating target product characteristics (i.e., ideal point) based on preferred brand position and consumer preferences for certain attributes.

As per claims 2 and 14, Cooper et al. discloses a method as recited in claims 1 and 13, wherein the step of providing a predetermined plurality of product attributes comprises the steps of providing a plurality of summary attributes and a clarifying definition for each of said summary attributes, said clarifying definition providing a relationship between each of said product attributes and the type of product under development (page 7, paragraphs 3 and 4; Table 2).

As per claims 3 and 15, Cooper et al. discloses a method as recited in claims 1 and 13, wherein the step of providing a predetermined plurality of product attributes includes the step of providing a detailed definition for each of said product attributes, each of said detailed definitions providing a context for each attribute as it relates to the product under development (page 7, paragraphs 3 and 4; Table 2).

As per claims 4, 5 and 17, Cooper et al. discloses a method as recited in claims 1 and 13, wherein the step of placing each of said attributes in an attribute class includes the step of placing each attribute in one of three classes wherein said first class represents attributes which differentiate the product from competing products, said

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second class represents important attributes, but which do not differentiate the new product from competing products, and said third class represents otherwise desirable product attributes (page 9, paragraphs 1 and 2; page 10, paragraphs 1 and 2; Table 5; Figures 2 and 3; Competing products are plotted at a distance from the ideal point, and thus, classified according to their competitive levels.).

As per claims 6, 18 and 19, Cooper et al. discloses a method as recited in claims 4, 13 and 17, further comprising the step of ranking each of said product attributes, said ranking being related to each of said classes such that each of said attributes in said first class have a higher rank than each of said attributes in said second class and each of said attributes in said second class have a higher rank than each of said attributes in said third class (page 9, paragraphs 1 and 2; page 10, paragraphs 1 and 2; Table 5; Figures 2 and 3).

As per claims 7 and 20, Cooper et al. discloses a method as recited in claims 1 and 13, further comprising the step of generating a primary brand position as a function of said product attributes (page 3, paragraphs 2-5).

As per claims 8 and 21, Cooper et al. discloses a method as recited in claim 1 and 13, further comprising the step of generating a present product brand position as a function of said product attributes (page 3, paragraphs 2-5).

As per claim 26, Cooper et al. discloses a method as recited in claim 19, wherein the step of ranking each of said attributes includes the step of ranking design attributes differently than usage experience attributes and driving experience attributes (page 3,

paragraphs 2-5; page 9, paragraphs 1 and 2; page 10, paragraphs 1 and 2; Table 5; Figures 2 and 3).

As per claim 27, Cooper et al. discloses a method as recited in claim 26, wherein the step of classifying each of said attributes includes the step of classifying each design attribute on a scale having more gradients than the classification scale for classifying usage experience attributes and driving experience attributes (page 3, paragraphs 2-5; page 9, paragraphs 1 and 2; page 10, paragraphs 1 and 2; Table 5; Figures 2 and 3).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 28, 29, 30 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cooper et al., "Building market structures from consumer preferences" and Eisner, "Essentials of Project and Systems Engineering Management."

As per claim 28, Cooper et al. discloses a method of developing a brand profile for a new automotive vehicle comprising the steps of:

providing a plurality of vehicle attributes, said plurality including at least attributes from each of the following groups of vehicle characteristics: usage/experience, driving

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experience and design (page 3, paragraphs 2-5; Table 2; The article discloses that consumers evaluate brands based on their underlying attribute values.);

grouping said product attributes in response to customer-oriented market research (page 3, paragraphs 2-5; page 7, paragraph 3; Table 2; The article discloses that consumers evaluate brands based on their underlying attribute values. Table 2 represents a category-attribute matrix.);

placing each of said attributes in an attribute class corresponding to brand personality importance (abstract; page 7, paragraphs 3 and 4; Table 2; Attributes are placed in attribute classes corresponding to brand personality.);

providing target customer characteristics (page 9, paragraphs 1 and 2; page 10, paragraphs 1 and 2; Table 5; Figures 2 and 3; The article discloses generating target product characteristics (i.e., ideal point) based on preferred brand position and consumer preferences for certain attributes.);

providing target vehicle brand image characteristics (page 3, paragraphs 2-5; Table 2);

thereafter, generating a preferred vehicle brand position as a function of said vehicle attributes, said target customer characteristics, and said target vehicle image characteristics (page 1, paragraphs 2-3; page 2, paragraphs 1 and 4; page 10, paragraph 1; Figure 2; The article discloses identifying competitive groups and how products' attributes influence their competitive levels.); and

generating target vehicle objectives as a function of said vehicle attributes and said preferred vehicle brand position, said target vehicle objectives representing

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customer-driven and image-driven characteristics for each of said plurality of vehicle attributes to be incorporated into said new automotive vehicle (page 1, paragraphs 2-3; page 2, paragraphs 1 and 4; page 10, paragraph 1; Figure 2).

Cooper et al. does not expressly disclose providing a cross-functional product team. However, Eisner discloses a cross-functional team (page 315, the integrated products teams are comprised of management, marketing and sales, research and development, engineering, production, finance and accounting). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to have a cross-functional team that generates a vehicle brand position and objectives as doing so allows for various departments from differing business functions to partake in the vehicle product development, thus, promoting cross-functional consensus.

As per claim 29, Cooper et al. discloses all the limitations of the method as recited in claim 28 wherein the step of providing target customer characteristics comprises the step of providing a brand positioning summary (page 9, paragraphs 1 and 2; page 10, paragraphs 1 and 2; Table 5; Figures 2 and 3).

As per claim 30, Cooper et al. discloses a method as recited in claim 29, wherein said brand positioning summary includes target customer defining characteristics, target customer selection rationales, a summary of the new vehicles' role in the product portfolio, a competitive assessment, enduring reasons why a customer may purchase the new vehicle and pricing considerations (page 2, paragraph 6; page 3, paragraphs 2-5; page 11, paragraph 1; A competitive assessment is made along with customer selection rationales, and pricing considerations, etc.).

As per claim 33, discloses all the limitations of the method as recited in claim 28. Cooper et al. does not expressly disclose a cross-functional product team that includes at least one member from various corporate departments. It is well known in the art to create teams for marketing purposes. These teams would include people from the vehicle program management, marketing, purchasing, finance, engineering and design. It would have been obvious to one skilled in the art to have all these different types of people on a cross-functional product team as it allows people from the various groups in the company to combine expertise in producing the vehicle. It would have been obvious at the time of the invention to have a cross-functional product team as it uses expertise from all areas of the company.

9. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cooper et al., "Building market structures from consumer preferences" and Eisner, "Essentials of Project and Systems Engineering Management," as applied above, and in further view of McCarthy et al. "Basic Marketing: A Global Managerial Approach."

As per claim 31, Cooper and Eisner disclose the limitations of the method as recited in claim 28 and the step of providing target vehicle image characteristics. However, Cooper and Eisner do not expressly disclose the step of providing a brand bulls eye, McCarthy et al. teaches placing data characteristics in a bulls eye formation (page 47). It would be obvious for one skilled in the art to place the brand information in a bulls eye format as it is a common format for depicting information pictorially. At the time of the invention, it would have been obvious for one to use the bulls eye to show

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brand information as it is a user-friendly format and clearly emphasizes important vehicle image characteristics.

Allowable Subject Matter

10. Claims 10 and 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Herz (U.S. 6,029,195) discusses a system for customized electronic identification of products;
- Foster et al. (U.S. 6,493,678) discusses a system and method for merchandising related applications;
- Adiano et al. (U.S. 5,278,751) discusses dynamic manufacturing process control;
- Viswanathan et al. "Understanding how product attributes influence product categorization: Development and validation of fuzzy set-based measures of gradedness in product categories," *JMR, Journal of Marketing Research*, February 1999 [retrieved from Proquest], discusses the impact of product attributes on their categorization;

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- Easingwood, Christopher. "Marketplace success factors for new financial services," *The Journal of Services Marketing*, 1993 [retrieved from Proquest], discusses marketing research and product development; and
- Keller, Kevin. "Managing brands for the long run: Brand reinforcement and revitalization," *California Management Review*, Spring 1999 [retrieved from Proquest], discusses brand management.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Michelle Colon whose telephone number is 703-605-4251. The examiner can normally be reached Monday – Thursday from 8:30am to 5:30pm and every other Friday from 8:30am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz, can be reached at 703-305-9643.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington D.C. 20231

or faxed to:

703-305-7687

[Official Communications; including After Final
communications labeled "Box AF"]

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703-746-7202 [For status inquiries, draft communication, labeled
"Proposed" or "Draft"]

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal
Drive, Arlington, VA 7th floor receptionist.


cmc

March 19, 2004


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